IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 33290 of 2006(K)

IA.90/2003 & 91/03 IN A.S.188/99 of ADDL. DISTRICT COURT, PARAVUR

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PETITIONER:

PINKU H. THALIATH, D/O. HORMIS THALIATH,
@ URUMESE, RESIDING AT THALIATH HOUSE,
POWER HOUSE EXTENSION ROAD, COCHIN-18.

BY ADV. SRI.PINKU H.THALIATH (PARTY IN PERSON)

RESPONDENTS:

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1. KOCHURANI @ ANITHA, W/O. JOY JOSEPH,
VALIPLACKAL, VENMATTOM KARA,
ELAMKULAM VILLAGE, KANJIRAPPALLY TALUK,
KOTTAYAM DISTRICT.

2. MRS. BIBI THALIATH, W/O. HORMIS
THALIATH, RESIDING AT THALIATH HOUSE,
POWER HOUSE EXTENSION ROAD, COCHIN-18.

3. JOHNY URUMESE,
THALIATH HOUSE, NEAR BHARANANGANAM CHURCH,
BHARANANGANAM, PALA.

4. THOMAS HORMIS THALIATH,
WOLFRUN, GIRGIA 30043, WOLFRUN, USA.

5. BABU URUMESE,
THALIATH HOUSE, NEAR BHARANANGANAM CHURCH,
BHARANANGANAM, PALA.

6. ANJU THALIATH,
THALIATH HOUSE, POWER HOUSE EXTENSION ROAD,
COCHIN-18.

7. HORMIS LONA THALIATH,
RESIDING AT THALIATH HOUSE,
POWER HOUSE EXTENSION ROAD, COCHIN-18.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 33290 OF 2006

Dated 14th December 2006

JUDGMENT

Petitioner is second appellant in A.S.188/99 on the file of Additional District court, North Paravur. Case of petitioner is that in the appeal, appellants produced Ext.P1 letter which according to them was written by plaintiff/first respondent and contents of Ext.P1 cut the very root of the case set up by first respondent at the time of evidence and appellants were not aware of Ext.P1 at the time when suit was pending before trial court and it came to their knowledge only at later stage and therefore they filed application under Rule 27 of Order XLI of Code of Civil Procedure to receive the same and as the document is in a highly mutilated stage they did not produce the original and a copy of document was produced before the court as there is chance of destruction of the letter and so notorised copy of letter was produced. Contention of petitioner is that as genuineness of Ext.P1 was

disputed in the counter filed by first respondent, it is necessary to establish its genuineness and for that purpose document is to be sent to a handwriting expert and therefore directions are to be issued to appellate court to dispose I.A.Nos.90/03 and 91/03 before hearing of the appeal. Petitioner also sought a further direction to District court to send the original of Ext.P1 for comparison to Forensic Science Laboratory with the handwriting of first respondent.

2. Learned counsel appearing for petitioner was heard.

3. When an additional document was produced before appellate court the document can be admitted in evidence only on satisfying the conditions provided under Rule 27 of Order XLI of the Code. If the appellate court could be satisfied that in spite of due diligence document could not be produced or that document is necessary for pronouncing better judgment, appellate court is competent to receive the same as additional evidence. That is a question to be decided only at the time of hearing the appeal and no direction as sought for by petitioner could be issued to District Judge to decide the

question whether document could be received as additional evidence. Similar is the case with the directions sought for to send the document to the expert. Even according to the petitioner such a request has not been made before the appellate court and petitioner is only intending to move the District court for that purpose. Question whether original Ext.P1 is to be sent to an expert or not is also a matter to be decided by the learned District Judge, if such a request is made at the time of hearing the appeal. If an application is filed to send original of Ext.P1 to the expert, learned District Judge has to consider it along with I.A.No.90/03 and 91/03 at the time of hearing the appeal. If conditions provided under Rule 27 are satisfied additional evidence has to be received.

Writ petition is disposed of accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.